

**CONTRACT
BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES
AND
PROVIDER NAME**

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "Department " and PROVIDER LEGAL ENTITY NAME, hereinafter referred to as the "Provider," is for the provision of child care services for recipients of child care assistance from the Department of Human Services as further defined in the "SCOPE OF SERVICES."

The Provider is A/AN INDIVIDUAL, FOR-PROFIT CORPORATION, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY.

PROVIDER LEGAL ENTITY NAME (Provider) and the State of Tennessee, Department of Human Services, (Department), in consideration of the child care services provided by the Provider to eligible recipients of the Department's child care assistance program, and in consideration of the payments to Provider by the Department for such services mutually agree as follows:

A. Scope of Services

- A.1. Required Forms. The Provider shall register as a vendor with the State of Tennessee and the Department in order to participate in the child care certificate program and receive payment from the Department.
- A.2. Licensing and Assessment Cooperation. The Provider shall allow and cooperate with any onsite licensing or certification procedures and assessments associated with the Department of Human Services (DHS) and Department of Education (DOE) licensing or certification processes and Star Quality rated licensing processes. Failure to do so may result in termination of this Contract.
- A.3. Reports of Child Abuse. The Provider shall immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services (DCS) or law enforcement authorities as required by Tennessee law.
- A.4. Time and Attendance
 - a. The Provider shall submit attendance reports for all children enrolled under the Certificate Program in the manner specified by the Department.
 - b. The Provider shall not include on the attendance report any child receiving child care services without a valid authorization and enrollment by the Department in the Child Care Certificate Program.
 - c. The Provider shall not use the issuance date of the authorization for participation in the Child Care Certificate program as the first day of participation on the attendance report unless the child actually attended on the authorization date.
 - d. The Provider shall not include holidays on the attendance report when the Provider's facility is closed if those are not holidays also observed by the State.
 - e. The Provider shall not include on the attendance report any days for a child after that child's enrollment in the Child Care Certificate Program is terminated.
 - f. The Provider shall report to the Department when a child enrolled in the Child Care Certificate Program is no longer in care, is chronically absent, or changes in circumstances occur which

may affect eligibility for care such as the parent is no longer participating in a required work activity or the child is no longer living in the home.

- g. The Provider shall not include on the attendance report absences preceding a child's termination. The Provider shall include only the child's last day of attendance prior to such absences.
- h. The Provider may include on the attendance report a child's absence for routine illnesses or family needs up to ten (10) days per monthly pay period or up to five (5) days per biweekly or semimonthly pay period.
- i. The Provider shall notify the Department anytime a child enrolled in the Child Care Certificate Program is absent five (5) consecutive days. Notification may be in writing or by telephone and must be made no later than the first business day following the 5th consecutive absence. Failure of the Provider to report five (5) consecutive absences may result termination of this Contract.
- j. The Provider shall only include on the attendance report absences exceeding ten (10) consecutive days under the following conditions:
 - i. The absence does not exceed a maximum of thirty (30) days.
 - ii. The Provider shall, upon demand, provide the Department with a doctor's written statement describing the illness, the reason for the extended absence, and indicating the number of days of additional absence needed beyond the five (5) or ten (10) days allowed.
 - iii. The Provider understands and agrees that it is responsible for obtaining such documentation.
 - iv. Failure on the part of the Provider to present medical documentation upon request may result in payment being reduced.

A.5. Documentation. The Provider shall maintain documentation of daily attendance, hours and location of each child, as may be required by the Department.

- a. The Provider shall document attendance by requiring each child to be signed in and out by an authorized person whose name is listed in the child's record. The authorized person shall not be an employee of the Provider unless such person is the child's legal guardian.
- b. The Provider understands and agrees that acceptable forms of documentation may be one or more of the following, but that the Department may require different, or additional, forms of documentation of a child's daily attendance, at its sole discretion:
 - i. Daily Paper sign-in and sign-out logs signed by a parent / other "authorized" person.
 - ii. Transportation vehicle logs can only be used as documentation if the parent or other "authorized person" signs the child onto and/or off the vehicle.
- c. The Provider shall immediately make available upon request by the Department, the Comptroller of the Treasury, or any federal agency any documentation related to any payments made by the state or federal government for the care of children enrolled in the Child Care Certificate Program, up to a period of three (3) years.
- d. The Provider specifically understands and agrees that such documentation shall be maintained at all times at the location at which child care is provided under this Contract and not at any other location.

- e. The Provider further agrees that any failure to maintain such files at such location and to immediately produce such files upon the request of DHS or any other agency of the state or federal government may result in the denial of any and all payments for child care services for any children for whom payments may be or have been requested under this Contract.
- f. The Provider understands the decision of the Department with regard to adequate documentation will be final and understands and agrees that Provider's remedies are only those that exist under this contract.

A.6. State Actions Affecting Licensing or Certification.

- a. If a Provider's child care license or certification issued to the Provider by DHS or DOE to care for children is suspended and the Provider is not authorized to provide child care to all, or to any group, of children enrolled with Provider, due to the suspension, all payments for the period of the suspension shall be terminated for any children for whom care can no longer be legally provided because of the suspension.
- b. If the license or certification is revoked or denied, or the license is restricted, and is timely appealed, payments shall continue during the period of such appeal, unless the license is suspended subsequent to the timely filing of an appeal, at which point payments will be terminated in accordance with paragraph A.6.a above until the suspension is dismissed or altered to allow for the care of children by Provider. If no suspension of the license or certification occurs subsequent to the timely filing of an appeal, amounts paid to Provider during the pendency of the appeal of the revocation or denial of a license or certification shall not be subject to recovery in the event Provider is not successful on appeal unless such payments may be otherwise determined to have been incorrectly made.
- c. Decisions affecting payments based on licensing actions made by the Department are final.

A.7. Unregulated Providers.

The parties agree that an "unregulated provider" shall be a provider not subject to licensing requirements by the Department or any other state agency.

a. Qualifications/Limitations for Unregulated Care

- i. The Provider agrees that an unregulated provider must be at least age twenty-one (21) years of age at the time of application and must be approved by the Department to participate in the Child Care Certificate Program.
- ii. The Provider agrees that a parent / caretaker, alleged parent, step-parent, or legal guardian of a child in care is not eligible to receive certificate payments as an unregulated provider. This limitation shall also apply to the sibling or half-sibling of the child needing care while the sibling or half-sibling is also residing in the child's home.
- iii. The Provider understands and agrees that care provided in the child's home is not permitted except in those circumstances where the child under care resides in the Provider's home.
- iv. The Provider understands and agrees the location of care can only be the Provider's home and not a business or another home.

b. Enrollment Limits for Unregulated Providers.

- i. The Unregulated Provider agrees that it may provide care for up to six (6) children during a twenty-four (24) hour period, so long as two (2) of these six (6) children are related to the Provider.

- ii. The Unregulated Provider also understands it may receive payment for a maximum of four (4) children who must be unrelated to the Provider.
- iii. The Unregulated Provider further understands the care of the six (6) children may be staggered anytime during the day or night to accommodate the needs of each parent's schedule.
- iv. The Unregulated Provider understands for purposes of these enrollment limits, all children below the age of thirteen (13) shall be counted.
- v. The Unregulated Provider also understands that the use of multiple shifts to care for more than six (6) children during a 24-hour period shall not be permitted.

c. Criminal Background Status of Unregulated Providers.

An Unregulated Provider hereby agrees to disclose his or her criminal and juvenile records to the Department and the history of each person assisting in the care of the children in the Provider's home as well as all residents of the home. Self-disclosure by the provider of a criminal background consisting of the offenses in subparagraph d below is sufficient verification for the Department to take action. The Department may verify the accuracy of background information submitted by the Provider.

d. Disqualifying Criminal Offenses.

- i. No one may provide care or otherwise have access to children in the Provider's home who:
 - I. Is currently charged with;
 - II. Has been convicted of; or,
 - III. Has pled guilty to, any:
 - (a) Crime involving a child;
 - (b) Crime of violence against another person; or,
 - (c) Any crime involving the use, possession, transportation, sale, or manufacture of any drug.
- ii. Any exceptions to this prohibition are subject to the approval of the Department.
- iii. The Unregulated Provider understands and agrees that upon verification or self-disclosure of one or more of the above offenses, this Contract shall be terminated. Notice of such termination shall be given in accordance with the terms of this agreement.
- iv. The Unregulated Provider understands and agrees there is no appeal or review of the decision to terminate an unregulated provider's enrollment agreement from the Certificate Program based on a violation of the criminal background provisions

B.1 CONTRACT TERM:

This Contract shall be effective for the period commencing on the date this document is approved by the Commissioner of the Department of Human Services and shall continue until terminated or modified pursuant to the terms of this Contract. The Department shall have no obligation for services rendered by the Provider which are not performed within the specified period and pursuant to the requirements of this Contract and state law.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability

- i. The State's established payment rates shall constitute the entire compensation due the Provider for the service and all of the Provider's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Provider.
- ii. The Provider is not entitled to be paid the established payment rate for any period under the Contract or any extensions of the Contract for work not requested by the Department. The established rates represent available funds for payment to the Provider and do not guarantee payment of any such funds to the Provider under this Contract unless the Department requests work and the Provider performs the requested work. In that case, the Provider shall be paid in accordance with the State's established rates for child care. The State is under no obligation to request work from the Provider in any specific dollar amounts or to request any work at all from the Provider during any period of this Contract.

C.2. Compensation Firm. The State's established payment rates for child care under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended by the State.

C.3. Payment Methodology. The Provider shall be compensated based on the payment rates established and published by the Department. Payment rates shall be reduced on an individual child basis to reflect any appropriate parent copayment required. The Provider understands and agrees that payment rates may be amended by the State at any time.

- a. The Provider agrees and understands that all payments require a valid authorization issued by the Department for each child for whom payment is requested.
- b. The Provider agrees and understands that all payments will be calculated using reported individual child attendance submitted by the Provider.
- c. The Provider shall submit attendance reports within forty-five (45) days following the end of the attendance period following the instructions in Attachment A of this contract.
- d. The Provider understands and agrees that the Department shall have no payment liability for any child identified on attendance reports submitted more than forty-five (45) days following the end of the attendance period.
- e. The Provider understands and agrees that failure to submit attendance reports to the Department within the prescribed forty-five (45) days may result in termination of this Contract.
- f. The Provider understands and agrees that incomplete attendance reporting for any child, as determined by the Department, shall result in denial of any requests for payment for such child.
- g. The Provider understands and agrees that payment for a child with incomplete attendance reporting is contingent upon the Department receiving accurate attendance documentation for the child within fifteen (15) days of notification by the Department of a payment denial.
- h. The Provider understands and agrees that failure to adhere to the attendance reporting time frames may result in denial of the claim for payment for each child for whom accurate and correct information, as determined by the Department, is not provided.
- i. The Provider understands and agrees that attendance reports submitted prior to the close of business on the last day of the attendance period shall be considered invalid.

- j. The Provider understands and agrees the Department will have no liability to reimburse the Provider for any underpayment error not brought to the attention of the Department within ninety (90) days after the end of the attendance period in which the error was made.
 - k. The Provider understands and agrees that core hour programs funded by other agencies, i.e., Head Start or local School System Pre-K classes, shall be excluded from attendance reports submitted to the Department. Failure to exclude these core program hours from attendance reports may result in termination of this Contract.
 - l. Nothing shall be paid to a Provider where a parent is in direct supervision of a child, including, but not limited to, providers operating family and or group homes.
- C.4. The Provider's compensation shall be contingent upon the satisfactory compliance with Section A.
- C.5. The Provider agrees it shall be compensated for units of service based upon the payment rates established by the State.
- a. The Department's payment to the provider will be the lesser of:
 - i. The maximum state payment rate for that child, or
 - ii. The general public rate the provider would charge for that child if it was not participating in the Child Care Certificate Program.
 - b. The Provider shall provide to parents, in writing, documentation of rates greater than the State payment rates and agrees that any rate charged higher than the State rates are not enforceable without written notice to the parent at the time of enrollment or if Provider's rates are increased subsequent to the child's enrollment. The Department may require proof of written notice to the parent prior to authorization of payment.
 - c. The Provider shall collect parent or caretaker co-pay fees, as set by the State and required by federal regulation. The Department assumes no liability for fees that are not paid.
- C.6. Payment. The payment made by the State shall not prejudice the State's right to object to or question any attendance documentation or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the child care service provided nor as an approval of any of the attendance documentation submitted by the Provider.
- C.7. Payment Reductions. The Provider's payment shall be subject to reduction for amounts included which are determined by the State, on the basis of review or audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Provider under this or any Contract between the Provider and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Provider.
- C.9. Methods of Collection of Overpayments. Provider understands and agrees that an "Overpayment" is any payment, whatever the cause, that exceeds the amount that is lawfully or otherwise correctly due under the terms of this agreement, or that is not adequately supported by necessary documentation acceptable to the Department.
- a. The Provider understands and agrees to the following child care certificate repayment and offset procedures for Overpayments:
 - i. Lump Sum. The Provider may choose to repay an overpayment in one payment reduction from their next billing period or may choose to repay the full amount of the overpayment by

cashiers check made out to the Department of Human Services and mailed or delivered to the Department's Fiscal Services unit.

ii. Installments. The Provider may request approval from the Department to repay any overpayment in installments from a set number of billing periods agreed upon by the parties. A repayment agreement for this purpose must be signed by the Provider and approved by the Department.

iii. Collection by Legal Action. – The Department may pursue legal action for repayment under state law in the absence of an arrangement for voluntary repayment.

b. Terminated Providers with Debts – Providers terminated from the Certificate Program while owing a debt to the Department may not re-enroll in the program until a satisfactory repayment agreement has been established and approved by the Department.

D. AUDITS AND REPAYMENT REQUIREMENTS:

D.1. The Provider agrees to allow the Department, Comptroller of the Treasury, or any federal agency to perform onsite audit reviews of the Provider's payments and compliance with the Provider Contract at anytime and agrees that the procedures established in this section and Section C shall govern the review and repayment procedures for questioned costs for Child Care Certificate Program (CCCP) payments.

D.2. The Department will identify and compute any overpayments made by the Department to Provider. A report of the review and any findings will be sent to Provider by the Department.

D.3. If the audit report contains overpayments the Provider must, within fifteen (15) calendar days of the report, make payment arrangements as specified in Section C.9.

D.4. If Provider does not agree with the findings, it shall provide any additional information and documents that it believes will resolve the findings to the Department within the fifteen (15) calendar day period.

D.5. The Department will review any new or additional information supplied by the Provider and inform the Provider of the outcome of the review and possible changes in the questioned costs.

D.6. Failure to resolve the findings and/or set up a repayment for overpayments as specified in Section C.9. shall result in all future payments being withheld until such overpayments are paid in full and may result in termination pursuant to the terms of this Contract.

E. STANDARD TERMS AND CONDITIONS:

E.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee state laws and regulations.

E.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee state officials in accordance with applicable Tennessee state laws and regulations.

E.3. Termination for Convenience. The Contract may be terminated by the State by giving thirty (30) calendar days written notice to the Provider effective upon the date of mailing. The Contract may be terminated by the Provider before the effective date of termination by giving written notice to the State effective upon the date of mailing. Should the State exercise this provision, the Provider shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Provider exercise this provision, the State shall have no liability to the Provider except for compensation due for all satisfactory and authorized services completed as of the termination date. The final decision as to fair compensation shall be determined by the State.

In the event of disagreement, the Provider may file a claim with the Tennessee Claims Commission in order to seek redress.

- E.4. Termination for Cause. If the Provider fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Provider violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for authorized and satisfactorily completed services. Notwithstanding the above, the Provider shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Provider.
- E.5. Subcontracting. The Provider shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract.
- E.6. Nondiscrimination. The Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Provider on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Provider shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- E.7. Records. The Provider shall maintain documentation for all charges under this Contract. The books, records, and documents of the Provider, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- E.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring

after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- E.8. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- E.9. Independent Provider. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Provider, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Provider's employees, and to pay all applicable taxes incident to this Contract.
- E.10. State Liability. The State shall have no liability except as specifically provided in this Contract.
- E.11. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- E.12. State and Federal Compliance. The Provider shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- E.13. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Provider agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Provider acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
- E.14. Completeness. This Contract, and its attachments and referenced documents, is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- E.15. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall

remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- E.16. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

F. SPECIAL TERMS AND CONDITIONS

- F.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- F.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications related to the terms of this Contract shall be in writing and shall be made by first class mail, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Director of Families First and Child Care Policy
Department of Human Services
400 Deaderick St.
12th Floor Citizens Plaza Building
Nashville, TN 37243-1403
Telephone # 615-313-5652
FAX # 615-313-6619

The Provider:

NAME & TITLE OF CONTACT PERSON
PROVIDER NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- F.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Provider. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Provider shall cease all work associated with the Contract. Should such an event occur, the Provider shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- F.4. Confidentiality of Records.

The Contractor agrees that strict standards of confidentiality of records of children and their families who are applicants or recipients of Families First and who are receiving child care payments pursuant to this Contract shall be maintained in accordance with state and federal law and regulations. (Reference *Tennessee Code Annotated*, Section 71-3-119, 45 Code of Federal Regulations § 205.50 and all other applicable state and federal law and regulations). All material

and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State whether verbal, written, electronically or otherwise shall be regarded as confidential information in accordance with the provisions of state law and ethical standards and shall not be disclosed, except as otherwise permitted by law, regulation or court order, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with federal and state law and ethical standards.

The Contractor further agrees that any information provided by the State relative to applicants or recipients of Families First is to be used only for the administration of this Contract or in any investigation, prosecution, or criminal or civil proceeding, conducted pursuant to this Contract. The Contractor agrees to provide safeguards to restrict the use or disclosure of any information concerning such applicants or recipients to purposes stated in this section. The safeguards provided shall also prohibit disclosure to any committee or legislative body of any information which identifies by name or address any such applicant or recipient. It shall be the Contractor's responsibility to ensure that any destruction of confidential information, as described in this section, will be accomplished in a manner consistent with state policy and federal regulations pertaining to the destruction of private or confidential data.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first and second paragraphs of this section.

The Contractor's obligations under this section do not apply to information; in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- F.5. Workpapers Subject to Review. The Provider shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Internal Audit Division of the Department of Human Services and Comptroller of the Treasury or his representatives, upon request, during normal working hours either or subsequent to the completion of this Contract.
- F.6. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Provider shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Provider shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- F.7. Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.

- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 – Reporting and Registration Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. gross mismanagement,
 - ii. gross waste,
 - iii. substantial and specific danger to public health or safety,
 - iv. abuse of authority, or
 - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) **Section 902 – Access Of Government Accountability Office.** The Contractor shall provide that the Comptroller General and his representatives are authorized:
 - i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and

- ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.

(5) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.

(6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
- ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.

(7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

(8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

- e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section F.7., "Federal Economic Stimulus Funding."

F.8. ACKNOWLEDGMENT BY CHILD CARE PROVIDER OR DULY AUTHORIZED REPRESENTATIVE:

- a. I, THE DULY AUTHORIZED REPRESENTATIVE OR OWNER OF THE PROVIDER AGENCY, HAVE READ AND UNDERSTAND ALL TERMS OF THIS CONTRACT AND AGREE FOR THE AGENCY, OR AS OWNER, TO COMPLY WITH THESE CONDITIONS.
- b. AS THE DULY AUTHORIZED REPRESENTATIVE OR OWNER OF THE PROVIDER AGENCY, I UNDERSTAND AND AGREE THAT ANY PAYMENTS TO THE PROVIDER AGENCY MADE IN ERROR OR AS THE RESULT OF FRAUD CONSTITUTE A DEBT OWED TO THE STATE OF TENNESSEE AND I, OR MY AGENCY, AS THE PROVIDER TO WHOM OR TO WHICH CHILD CARE CERTIFICATE PAYMENTS ARE MADE UNDER THIS CONTRACT, WILL REPAY, AS AN INDIVIDUAL OR AS AN ENTITY, ACCORDING TO A PAYBACK PLAN WHICH IS SATISFACTORY TO THE DEPARTMENT, ANY CURRENT OR FUTURE OUTSTANDING DEBT TO DHS OR THE STATE OF TENNESSEE THAT RESULTS FROM OVERPAYMENTS OR FRAUD REGARDING THE CHILD CARE CERTIFICATE PROGRAM.
- c. AS THE DULY AUTHORIZED REPRESENTATIVE OR OWNER OF THE PROVIDER AGENCY, I FURTHER UNDERSTAND AND AGREE THAT ANY CURRENT, FUTURE OR OTHERWISE OUTSTANDING DEBT OR CIVIL PENALTY THAT I OR MY AGENCY, AS AN INDIVIDUAL OR AS AN ENTITY, MAY OWE UNDER THIS OR UNDER ANY ADMINISTRATIVE OR JUDICIAL ORDER OR UNDER ANY PAYMENT, GRANT OR BENEFIT THAT WOULD OTHERWISE BE DUE TO THE PROVIDER AGENCY, MAY BE OFFSET BY THE DEPARTMENT OR ANY AGENCY OF THE STATE OF TENNESSEE FOR ANY SUCH DEBTS OR CIVIL PENALTIES FROM PAYMENTS OTHERWISE DUE, EXCEPT AS OTHERWISE SPECIFICALLY PROHIBITED BY LAW.
- d. I ACKNOWLEDGE THAT I HAVE BEEN GIVEN A COPY OF THIS CONTRACT.

PROVIDER OR AUTHORIZED REPRESENTATIVE
PRINT NAME AND TITLE:

SIGNATURE: _____ DATE: _____

_____ DATE: _____
COMMISSIONER, TENNESSEE DEPARTMENT OF HUMAN SERVICES

ATTACHMENT A

Attendance Instructions

1. Providers must record the actual hours attended by each child for each day on the Enrollment Attendance Form. Providers will round any minutes off to the nearest hour.
2. The Provider will leave the Enrollment Attendance Form “blank” for a child if it does not expect payment for that child for that day. Blank spaces will be used by a Provider to indicate:
 - a. The days prior to the start of child care service;
 - b. The days following a child’s termination;
 - c. Days of the week that do not require payment for some any reason.
3. The provider will enter a “T” on the Enrollment Attendance Form to indicate the termination of a child from the provider’s program. The “T” will be placed in the space for the day after the last day of the child’s attendance.
4. The provider will enter an “A” on the Enrollment Attendance Form to indicate a child was scheduled to attend, but was absent for that day.
5. The provider will enter a “C” on the Enrollment Attendance Form to indicate the provider was not open for business on that day.
6. The provider will enter an “H” on the Enrollment Attendance Form for Paid State Holidays. – The “H” code indicates the Provider was closed for an approved state holiday.
7. The provider will enter an “N” on the Enrollment Attendance Form when the child is not scheduled to be present, and the provider does not expect to be paid, due to a Special Child Schedule. The Certificate Program authorizes a special schedule for specific children when a parent’s activity schedule makes care unnecessary for one (1) to four (4) days per week on a regular basis.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION